

State of Alaska FY2007 Governor's Operating Budget

Department of Law Statehood Defense Component Budget Summary

Component: Statehood Defense

Contribution to Department's Mission

The Statehood Defense unit of the Department of Law provides advice and representation to state agencies on issues raised by conflicts between state and federal jurisdiction.

Core Services

The Statehood Defense attorneys handle a variety of complex cases arising out of state/federal jurisdictional conflicts that will have a profound and lasting impact on management of Alaska's natural resources. The state frequently must defend against encroachment by the federal government into areas traditionally regulated by the state. The State of Alaska took title to all the lands underlying navigable waters within its borders at statehood; under the Equal Footing Doctrine, such lands pass to new states automatically, as a matter of constitutional right. However, in response to the United States' reluctance to recognize the state's title, Alaska has been forced to protect its title in court in several instances, including an original action in the United States Supreme Court to establish clear title to the tide and submerged land underlying marine waters in Southeast Alaska.

Because of the patchwork of land ownership in Alaska among the state, the United States, and private landowners, and because of the lack of public infrastructure, access is extremely important to the public. The Statehood Defense group works on RS 2477 rights-of-way, access in National Forests and across other federal land, ANCSA 17(b) and other easements, and the state periodically reviews proposed federal Public Use Management Plans to comment on public access issues. Statehood Defense attorneys also provide legal advice and assistance to the Governor's Office and state agencies on matters of federal Indian law.

The Statehood Defense unit provides ongoing legal advice to the Department of Fish and Game (ADF&G) as it works to implement dual management of subsistence resources, and closely monitors the actions of the Federal Subsistence Board. The Statehood Defense unit also works on issues arising under the Endangered Species Act, the Pacific Salmon Treaty, the Magnuson-Stevens Fishery Conservation and Management Act, and other federal laws to protect state fishery and wildlife resources and the state's role in managing them. The Statehood Defense unit frequently comments on and drafts amendments to bills before Congress on a wide range of resource related topics including amendments to the Alaska Native Claims Settlement Act (ANSCA), the Alaska National Interest Lands Conservation Act (ANILCA), and the Endangered Species Act. Statehood Defense attorneys also assist with state comments on federal proposals such as the Forest Service Roadless regulations, federal land management plans, and designation of new national monuments in Alaska.

FY2007 Resources Allocated to Achieve Results

FY2007 Component Budget: \$1,012,800

Personnel:

Full time	9
Part time	0
Total	9

Key Component Challenges

During FY2007, the Statehood Defense unit will work to protect and ensure access to state and private lands and on public waters across Alaska through assertions of RS 2477 rights-of-way, ANILCA access rights, and ownership of navigable waters. The unit will continue representing the state in the quiet title action against the United States for the

Coldfoot to Chandalar Lake (RST 9) and Caro to Coldfoot (RST 262) RS 2477 rights-of-way. Statehood Defense attorneys will work with the Department of Natural Resources (DNR) and ADF&G to file with the Bureau of Land Management (BLM) additional applications for recordable disclaimers of interest to navigable waters, and provide information to BLM that convince it to declare waterways navigable within the survey windows it is completing.

The Statehood Defense unit will participate in and monitor the ongoing federal actions relating to application to Alaska's Tongass and Chugach National Forests of a national Roadless Rule. The unit will participate in the ESA process as it relates to Pacific salmon and ensure adherence to the Pacific Salmon Treaty. The unit will continue to closely monitor the federal subsistence program, assist ADF&G in preparation of state comments, and challenge actions by the Federal Subsistence Board when necessary. Attorneys will review and comment on proposed federal legislation to complete conveyances under ANCSA and ANILCA and the Alaska Native Allotment Act by 2009, and will review proposed federal public use management plans for federal lands. The unit will also continue to work on issues relating to assertions of tribal sovereignty that impact state interests.

Significant Changes in Results to be Delivered in FY2007

No changes in results delivered.

Major Component Accomplishments in 2005

The state's attorneys completed briefing and oral argument before the United States Supreme Court on the issue of title to the submerged lands in Glacier Bay National Park.

The state's attorneys worked on two requests for reconsideration by the Federal Subsistence Board of a customary and traditional use determination related to Chistochina's moose determination, and of the Board's continued failure to prohibit commercial sales of bear claws and authorization of sale of bear teeth, skulls, and bones.

The state filed a new lawsuit against the United States challenging the manner in which the federal agencies applied the Federal Reserved Water Rights doctrine in federal subsistence regulations.

The unit briefed and argued the Manning case, a challenge to the state's Tier II subsistence hunting scoring criteria.

The state continued to file new applications with the Bureau of Land Management for recordable disclaimers of interest (RDI) for lands underlying navigable waters and has received a number of RDIs from BLM. The state has now filed a total of 13 applications to BLM for 31 waterbodies.

The state has continued to educate landowners about the public's right to use state navigable waters.

The state is monitoring the National Park Service's efforts to develop a User's Guide to access to inholdings in Alaska's National Parks under section 1110(b) of ANILCA.

The Department of Law intervened on behalf of the state in a number of lawsuits related to logging activities and timber sales in the Tongass National Forest.

Statehood Defense attorneys prepared the state's comments on federal regulations to replace the Clinton Roadless Rule.

The Department helped ADF&G in its role as a cooperating agency in the preparation of the final programmatic EIS for coastwide Pacific Salmon harvest, which addresses the management of Alaska's salmon fisheries in Southeast Alaska.

Through an appeal to the IBLA, Statehood Defense attorneys persuaded BLM to reconsider whether an access easement should be reserved in an ANCSA conveyance near Yakutat.

The Department of Law helped ADF&G draft an Environmental Assessment to evaluate ADF&G's request for a permit to take additional sockeye salmon eggs from Hidden Lake within the Kenai National Wildlife Refuge.

Statehood Defense attorneys helped ADF&G prepare comments on NMFS "Proposed Policy on the Consideration of Hatchery-Origin Fish in Endangered Species Act Listing Determinations for Pacific Salmon and Steelhead" and the "Proposed Listing Determinations for 27 ESUs [Evolutionarily Significant Units] of West Coast Salmonids".

Statehood Defense attorneys assisted with briefing and a moot court for a case involving the issue of whether a tribal court has jurisdiction over child support matters.

The state filed a new quiet title action against the United States to quiet title to two RS 2477 rights-of-way in northern Alaska.

Statutory and Regulatory Authority

AS 44.23.020

Contact Information

Contact: Elizabeth Barry, Chief Assistant Attorney General
Phone: (907) 269-5100
Fax: (907) 279-2834
E-mail: elizabeth_barry@law.state.ak.us

Statehood Defense Component Financial Summary

All dollars shown in thousands

	FY2005 Actuals	FY2006 Management Plan	FY2007 Governor
Non-Formula Program:			
Component Expenditures:			
71000 Personal Services	465.1	659.7	835.8
72000 Travel	10.6	10.3	9.2
73000 Services	328.3	782.1	135.6
74000 Commodities	9.7	34.5	29.0
75000 Capital Outlay	6.3	6.4	3.2
77000 Grants, Benefits	0.0	0.0	0.0
78000 Miscellaneous	0.0	0.0	0.0
Expenditure Totals	820.0	1,493.0	1,012.8
Funding Sources:			
1004 General Fund Receipts	820.0	1,493.0	1,012.8
Funding Totals	820.0	1,493.0	1,012.8

**Summary of Component Budget Changes
From FY2006 Management Plan to FY2007 Governor**

All dollars shown in thousands

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
FY2006 Management Plan	1,493.0	0.0	0.0	1,493.0
Adjustments which will continue current level of service:				
-Remove Statehood Entitlement Issues Sec 48(c) CH 159 SLA 2004 P 105 L10 (SB 283) Lapses 6/30/09	-350.0	0.0	0.0	-350.0
-Remove Statehood Defense Issues Sec 25(a) CH 3 FSSLA 2005 P 109 L 20 (SB 46) Lapses 6/30/06	-186.3	0.0	0.0	-186.3
-FY 07 Wage Increases for Bargaining Units and Non-Covered Employees	18.1	0.0	0.0	18.1
-FY 07 Health Insurance Cost Increases for Bargaining Units and Non-Covered Employees	1.6	0.0	0.0	1.6
-FY 07 Retirement Systems Cost Increase	34.7	0.0	0.0	34.7
Proposed budget increases:				
-Risk Management Self-Insurance Funding Increase	1.7	0.0	0.0	1.7
FY2007 Governor	1,012.8	0.0	0.0	1,012.8

**Statehood Defense
Personal Services Information**

Authorized Positions			Personal Services Costs	
	<u>FY2006</u> <u>Management</u> <u>Plan</u>	<u>FY2007</u> <u>Governor</u>		
Full-time	9	9	Annual Salaries	645,763
Part-time	0	0	COLA	17,228
Nonpermanent	0	0	Premium Pay	0
			Annual Benefits	312,406
			Less 14.31% Vacancy Factor	(139,597)
			Lump Sum Premium Pay	0
Totals	9	9	Total Personal Services	835,800

Position Classification Summary

Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Assoc Attorney I	1	0	0	0	1
Attorney III	1	0	0	0	1
Attorney IV	4	0	0	0	4
Attorney VI	1	0	0	0	1
Law Office Assistant I	1	0	0	0	1
Paralegal II	1	0	0	0	1
Totals	9	0	0	0	9